

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

CLEANUP AND ABATEMENT ORDER NO. 98-004
RIDGEMONT DEVELOPMENT INC., WATT RESIDENTIAL INC. WATT INDUSTRIES
OAKLAND, WATT HOUSING CORPORATION, ALCOA CONSTRUCTION SYSTEMS
INC., CHALLENGE DEVELOPMENTS INC., AP CONSTRUCTION SYSTEMS INC., F.M.
SMITH AND EVELYN ELLIS SMITH, REALTY SYNDICATE, LEONA CHEMICAL
COMPANY, ALCOA PROPERTIES INC.
LEONA HEIGHTS SULFUR MINE
MCDONELL AVE, OAKLAND, CA

The California Regional Water Quality Control Board, San Francisco Bay Region
(hereinafter the Board) finds that:

1. The Leona Heights Sulfur Mine is an approximately two-acre abandoned mining site that was operated as a sulfur mine from about 1900 to 1929. The inactive mine site is located in a steep ravine approximately one-half mile northeast of the intersection of Interstate 580 and State Highway 13, in the hills of Oakland. Sulfur-bearing ore mined from the site was probably used to manufacture paint and sulfuric acid. Since cessation of mining activities, conditions at the site have changed very little.
2. The site contains mine-tailing wastes. When water from the adjacent drainage and a site spring contacts the tailings, the water quality becomes significantly altered producing what is generally called "acid mine drainage". The acid drainage poses a serious threat to the beneficial uses of receiving waters in that the water discharging is acidic and contains high concentrations of dissolved metals above water quality objectives. The discharge flows into Lion Creek, which eventually discharges to the San Francisco Bay.
3. Water samples were collected from the site in 1989 and 1990. The analysis indicates site waters have been adversely impacted. The following values were reported at the site:
pH as low as 2.87
Arsenic as high as 1700 ug/l (Basin Plan 4-day objective is 190.0 ug/l)
Cadmium as high as 57 ug/l (Basin Plan objective is approx. 4.0 ug/l)
Chromium as high as 200 ug/l (Basin Plan 4-day objective is 11.0 ug/l)
Copper as high as 32,000 ug/l (Basin Plan 4-day objective is 6.5 ug/l)
Zinc as high as 13,000 ug/l (Basin Plan objective is approx. 21.0 ug/l)

4. The Regional Board staff adopted Waste Discharge Requirements (WDR) Order No. 92-105 on August 19, 1992. The Order named the following dischargers:
 - Ridgemont Development, Inc
 - Watt Residential, Inc. and Watt Industries/Oakland Inc. dba Ridgemont Development, Inc.
 - Watt Residential, Inc.
 - Watt Industries/Oakland, Inc.
 - Watt Housing Corporation
 - Alcoa Construction Systems, Inc.
 - Challenge Developments, Inc.
 - AP Construction Systems, Inc.
 - F.M. Smith and Evelyn Ellis Smith
 - Realty Syndicate
 - Aluminum Company of America

Agents of Ridgemont Development Inc. submitted a number of reports required by Order No. 92-105 including a corrective measures plan. Provision C.9 of the WDR required submission of documentation of completion of corrective measures for the site by October 30, 1994. Neither Ridgemont nor any of the dischargers implemented corrective measures at the site nor submitted the required documentation report.

5. Aluminum Company of America (Alcoa) appealed the Regional Board's Order to the State Water Resources Control Board (hereinafter State Board). The State Board by Order No. WQ 93-9, adopted July 1993, directed the Regional Board to remove Alcoa from Order No. 92-105 based on insufficient evidence in the Regional Board record to hold Alcoa liable as a discharger.

Two subsidiaries to Alcoa Properties Inc., Challenge Development Inc. and Alcoa Construction Systems Inc., also appealed the Regional Board's Order to the State Board; however, the State Board ruled in Order No. WQ 93-9 that these companies were properly named as dischargers.

6. Adoption of a new order by the Board is needed to implement the State Board's Order, clarify the involvement of the dischargers at the mine site, and to update the requirements for corrective action at the site.
7. This Order names as dischargers, the owners and operators of the mine during its period of operation in the first three decades of this century and owners of the property in the period of 1975 to the present. Though many if not all of the named dischargers no longer exist, successors in interest to these entities may become liable for complying with this Order, if the named dischargers do not comply.

8. The following describes the dischargers named in this Order, the named discharger's involvement with the mine site, and the current status of the discharger.

A. Owner and Mine Operators During the Mine Operation

1. F.M. Smith and Evelyn Ellis Smith
F.M. Smith owned the mine site property from 1909 to 1912. For a period of time during the mine's operation, F.M. Smith served as president of Leona Chemical Company, which was the mining company for the mine site. F.M. Smith sold property to Realty Syndicate in 1912. F.M. Smith died in the 1930's.
2. Realty Syndicate
Realty Syndicate owned the mine site property from 1912 to 1930. During this time period the Leona Chemical Company operated the mine. Based on Oakland City Directories, it appears the company ceased operations in the 1930's.
3. Leona Chemical Company
Operated the mine from approximately 1900 to 1929.
Secretary of State records indicate the company is not longer in existence.

B. Post Mine Operation Mine Owners

1. Ridgemont Development, Inc.
Ridgemont Development owned the mine site from 1981 to August 1997. During this period of time, Ridgemont Development owned the site with various partners who are described below. Secretary of State records indicate that Ridgemont Development Inc. dissolved in 1997.
2. Watt Residential, Inc. and Watt Industries/Oakland Inc. dba Ridgemont Development, Inc.
Watt Residential, Inc. and Watt Industries/Oakland Inc. each held a fifty-percent ownership interest in the site from 1990 through at least August of 1992. Additionally, Watt Industries/Oakland held a fifty-percent partnership interest in the site as early as 1986. It is believed that both Watt Residential and Watt Industries/Oakland have dissolved.
3. Watt Housing Corporation:
Watt Housing had a partnership interest in the site from 1986 to 1990. In 1990 Watt Housing assigned all its interest in the mine site to Watt Residential Inc. It is believed that Watt Housing Corporation has dissolved.
4. AP Construction Systems, Inc.
In October, 1986 Alcoa Properties Inc., sold all outstanding stock of Alcoa Construction Systems Inc. to AP Ventures Incorporated. AP Ventures Inc. (an Alcoa subsidiary) changed the name of Alcoa Construction Systems Inc. to AP Construction Systems, Inc. and two months later, conveyed all of AP

Construction Systems Inc.'s partnership interest in Ridgemont to Watt Housing Corporation. It is believed that AP Construction Systems Inc. has dissolved.

5. Alcoa Construction Systems, Inc.

Alcoa Construction Systems, Inc. held a fifty-percent ownership interest in the mine site between 1980 to 1986. Various other partners held the remaining fifty-percent interest in the site. Alcoa Construction Systems, Inc. was a wholly owned subsidiary of Alcoa Properties Inc., which in turn, was a wholly owned subsidiary of Alcoa. Alcoa Construction Systems, Inc. has dissolved.

6. Challenge Developments, Inc.

Challenge Development Inc., held a fifty-percent ownership interest in the mine site between 1972 to 1980. Challenge Development Inc. was a wholly owned subsidiary of Alcoa Properties Inc. Challenge Development Inc. dissolved in 1990.

7. Alcoa Properties Inc.

Alcoa Properties Inc. owned at least two subsidiaries, which owned the land on which the mine was located. The two subsidiaries have both been dissolved. It is believed that Alcoa Properties Inc. has also been dissolved.

9. The Board finds that the Dischargers have caused or permitted the discharge of waste that has entered Waters of the State, and created a condition of pollution or nuisance. The Dischargers have permitted the discharge of acidic water that contains concentrations of dissolved metals above water quality objectives. All of the Dischargers knew of the discharge and have the ability to control it. This Order requires the dischargers to submit and implement a cleanup plan which corrects the environmental problems associated with the abandoned mine site.
10. This Order is an action for the protection of the environment and is categorically exempt from the California Environmental Quality Act, pursuant to Section 15108, Chapter 3, Title 14 of the California Code of Regulations.

IT IS HEREBY ORDERED, pursuant to Section 13304, of Division 7 of the California Water Code, that the Discharger shall cleanup the waste discharged, abate the effect of further discharge, and take other remedial actions as follows:

A. Prohibition

Discharge of waste or hazardous materials that will significantly degrade water quality, or adversely affect beneficial uses of the waters of the State, is prohibited.

B. Remedial Measures

1. The Dischargers shall submit by **March 1, 1998** a technical report acceptable to the Executive Officer documenting the intent to comply with the requirements of this Order.
2. The Dischargers shall submit a revised corrective action plan **Implementation Schedule** acceptable to the Executive Officer by **March 20, 1998**. The revised schedule shall be for the implementation of the March 31, 1993, Leona Heights Mine Corrective Action Plan and Implementation Schedule (Levine-Fricke) as proposed by the Dischargers. Upon implementation of the 1993 plan, the discharge of acidic waters and elevated metals in the drainage water above water quality objectives shall cease. Implementation of the 1993 plan shall provide for the prevention of further erosion of the mine tailings, and shall encapsulate the mine tailings in a manner as to best isolate the mining waste from stormwater runoff and contact with groundwater. The Dischargers shall implement the 1993 plan immediately upon the approval of the revised Implementation Schedule.
3. Post construction monitoring which is aimed at assessing the effectiveness of remedial activities and can determine whether additional remedial activities are needed shall be conducted at the site. Post construction monitoring points shall be established to monitor site conditions. Post construction monitoring shall be implemented within **two-weeks** following completion of construction and the monitoring results shall be reported every **three months** thereafter.
4. The Dischargers shall submit a **Corrective Action Evaluation Report** as a technical report acceptable to the Executive Officer by **September 15, 1999**. The report shall consist of the results of the post construction monitoring efforts, an evaluation of the effectiveness of the corrective action activities, and a proposal for long term monitoring. The Report shall propose water quality protection standards, and additional remediation efforts, which may be necessary in order to meet such standards.
5. All excavated waste materials shall be disposed of appropriately, and if stored temporarily on land, shall be prevented from eroding and subsequently discharging to Waters of the State.
6. The Discharger shall submit monthly progress reports during the implementation of the corrective action activities and shall end upon completion of the corrective action activities. Post construction monitoring shall be implemented as described in B.3 above.

C. General Requirements

1. All hydrological reports, documents, plans and specifications shall be certified by either a State Registered Geologist, a certified Engineering Geologist or a Civil Engineer registered pursuant to Section 6762 of the Business and

Professions Code, who has at least five years experience in ground water hydrology.

2. All samples shall be analyzed by State certified laboratories accepted by the Board, using approved EPA methods.
3. If the Discharger is delayed interrupted or prevented from meeting one or more of the completion dates specified in this Order, the Discharger shall promptly notify the Executive Officer in writing with revised completion dates. The Board may consider revision to this Order.
4. Copies of all correspondence, reports, and documents about compliance with this Order, shall also be provided to the State Department of Fish & Game, The East Bay Regional Park District.
5. The Discharger shall immediately notify the Regional Board and the State Department of Fish and Game by telephone, whenever an adverse water quality condition occurs because of soil excavation and groundwater management related activities. A written confirmation on the incident shall follow within five working days.

Pursuant to Section 13304 of the Water Code, the Discharger is hereby notified that the Regional Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Regional Board to investigate unauthorized discharges of wastes and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order. Upon receipt of a billing statement for such costs, the Discharger shall reimburse the Regional Board.

Pursuant to California Water Code sections 13304 and 13350, if a Discharger fails to comply with the provisions of this order, the Board may schedule a hearing to consider assessing civil monetary penalties and to consider requesting the Attorney General to take appropriate enforcement action against the Dischargers, including injunctive and civil monetary remedies.

Loretta K. Barsamian
Executive Officer

Date

Date:
File: 2199.9279 (TS)

Certified Mail No.
Return Receipt Requested

Aluminum Company of America
3450 Park Lane
Pittsburgh, PA 15275
Attention: Joe Norton, Environmental Manager

SUBJECT: Cleanup And Abatement Order No. 98-004, Leona

Dear Mr. Norton:

Enclosed is a copy of the Cleanup and Abatement Order No. 98-004, relating to the Leona Heights mine discharge. The discharge poses a serious threat to the beneficial uses of receiving waters in that the water discharging is acidic and contains high concentrations of dissolved metals above water quality objectives. This discharge is contrary to the California Water Code. The Order requires the dischargers to submit and implement a cleanup plan which corrects the environmental problems associated with the abandoned mine site.

The Order names as dischargers, the principal owners and operators of the mine during its period of operation in the first three decades of this century and owners of the property in the period of 1975 to the present. Though many if not all of the named dischargers no longer exist, successors in interest to these entities may become liable for complying with this Order, if the named dischargers do not comply.

Also note that the Porter-Cologne Act, Section 13304, entitles the Regional Board to recover reasonable costs actually incurred by the staff from responsible parties to oversee cleanup of unauthorized discharges of wastes which have adversely affected waters of the State. The State billing rate is approximately \$70 per hour, though this rate may vary depending on the salary of the individual(s) responsible for the oversight. We estimate that between 70 and 80 total labor hours may be required in the oversight of the cleanup of this site for the period, which ends June 30, 1998. This is merely an estimate. The actual time will depend on the nature and extent of the necessary cleanup oversight.

A detailed description of the billing procedures is enclosed. Please confirm you intent to reimburse cleanup oversight work by signing the attached oversight cost reimbursement form, and return it to the Regional Board no later than XXXXXX. Upon receipt of this, the State Board will initiate the billing process.

If you have any questions relating to this Order, please contact Mr. Terry Seward of my staff at (510) 286-4155.

Sincerely,

Loretta K. Barsamian
Executive Officer

Attachment: Oversight Cost Reimbursement Form
Reimbursement Process for Regulatory Oversight (rev. 2/5/97)
Cleanup and Abatement Order No. XXXXXX

cc: Aluminum Company of America
1501 Alcoa Building
Pittsburgh, PA 15219
George Lincoln, RWQCB
Terry Seward, RWQCB
Curtis T Scott, RWQCB

TO: REGIONAL BOARD MEMBERS

DATE:

FROM: Loretta K Barsamian
Executive Officer

SUBJECT: Cleanup and Abatement Order No. 98-004

Enclosed is a copy of a Cleanup and Abatement Order issued to Ridgemont Development Inc., Watt Residential Inc., Watt Industries Oakland, Watt Housing Corporation, Alcoa Construction Systems Inc., Challenge Developments Inc., AP Construction Systems Inc., F.M. Smith and Evelyn Ellis Smith, Realty Syndicate, Leona Chemical Company, and Alcoa Properties Inc.

The site contains mine-tailing wastes. When water from the adjacent drainage and a site spring contacts the tailings, the water quality becomes significantly altered producing what is generally called "acid mine drainage". The acid drainage poses a serious threat to the beneficial uses of receiving waters in that the water discharging is acidic and contains high concentrations of dissolved metals above water quality objectives. This Order requires the dischargers to submit and implement a cleanup plan which corrects the environmental problems associated with the abandoned mine site. Should you have any questions, please contact Mr. Terry Seward at (510) 286-4155.

File No. 2199.9279

Attachments:

CAO No. 98-004

ATTACHMENT 4: Sample staff report

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

INTERNAL MEMO

TO: STEVEN R. RITCHIE FROM: ALAN D. FRIEDMAN
Executive Officer Staff Engineer

DATE: March 1, 1994

SUBJECT: Issuance of Cleanup and Abatement Order 94-034
Santa Fe Pacific Pipeline Partners

Santa Fe (the discharger) owns and operates a 14-inch petroleum product pipeline in Martinez. On January 25, 1994, gasoline and diesel was detected in and immediately west of Pacheco creek. This creek flows northward into Suisun Bay, and is bordered on the east by Tosco Refinery, and to the south by Acme landfill. The leak site is a marshy area under tidal influence. The leak was traced to a pinhole leak approximately 2 mile west of the Creek, and at least 10,000 gallons of gasoline and diesel are believed to have leaked.

Under supervision of the Coast Guard, DFG and ourselves, emergency cleanup measures were pursued immediately following the detection of the leak. Heavily impacted soils were removed for off-site remediation and/or disposal, and booms and absorbent materials were deployed to remove floating fuel products.

Several surface-water samples were collected and analyzed, and gasoline and diesel were found at levels up to 8,000 and 47,000 ppm respectively. Other petroleum hydrocarbon levels and metals were at much lower levels. A wildlife damage assessment has been conducted which shows that a total of 9.5 acres of vegetated and open water channel, marshy and pond areas were affected by the leak. About half of this area was moderately to heavily affected with the major impact being damaged vegetation. Wildlife impacts were limited to a modest fish kill of unknown cause.

The discharger has applied for a permit to treat and discharge contaminated surface water, in accordance with Board general permit 91-056. They have installed an on-site treatment system, which relies upon carbon filtration. They intend to treat and flush the marsh out with up to 1.3 million gallons of water.

The extent of soil and ground water contamination remains unknown.

RECOMMENDATIONS:

Issuance of a Cleanup and Abatement Order, to contain tasks for the cleanup of sediments, ground water characterization, and the implementation of remedial actions for on-site surface and ground water pollution.

OSPR will be pursuing enforcement action, so additional penalties from our agency are unwarranted. We should instead refer this matter to OSPR for staff cost recovery.

Oversite Cost Reimbursement Form

Loretta K. Barsamian
Executive Officer
Regional Water Quality Control Board
San Francisco Bay Region
2101 Webster Street, Suite 500
Oakland, CA 94612

ATTN: Terry Seward

Dear Ms. Barsamian:

I am in receipt of your letter dated _____, transmitting the Regional Board's Cleanup and Abatement Order No. XXXX.

I, _____, acknowledge that I have received and read a copy of the enclosure, Reimbursement Process for Regulatory Oversight, and that I understand the reimbursement process and billing procedures as explained in that enclosure. I agree to remit oversight cost reimbursement as required by Cleanup and Abatement Order No. XXXXX. I also understand that signing this form does not constitute any admission of liability, but rather only an intent to pay for costs associated with oversight. Billings for payment of oversight costs should be mailed to the following individual and address:

Billing Contact: _____

Billing Address: _____

Signature: _____
Title: _____
Date: _____

ATTACHMENT 6: Guide to the Billing Process

REIMBURSEMENT PROCESS FOR REGULATORY OVERSIGHT

We have identified your facility or property as requiring regulatory cleanup oversight. Pursuant to Porter-Cologne, Section 13304, reasonable costs for such oversight can be recovered by the RWQCB from the responsible party. The purpose of the enclosure is to explain the oversight billing process structure.

INTRODUCTION

Porter-Cologne, Division 7, Section 13304, authorizes the SWRCB to set up Cost Recovery Programs. The Budget Act of 1993 authorized the State Water Resources Control Board to establish a Cost Recovery Program for Spills, Leaks, Investigations, and Cleanups (SLIC). The program is set up so that reasonable expenses incurred by the SWRCB and RWQCBs in overseeing cleanup of illegal discharges, contaminated properties, and other unregulated releases adversely impacting the State's waters can be reimbursed by the responsible party. Reasonable expenses will be billed to responsible parties and collected by the Fee Coordinator at the SWRCB in the Division of Clean Water Programs (CWP). The Fee Coordinator keeps an active billing list to ensure that charges for such expenses are appropriately assessed and collected in a timely manner.

THE BILLING SYSTEM

Each account has a unique charge number assigned to it. Whenever any oversight work is done, the hours are billed to the charge number. For these charges, the hours and the associated expenditures,(staff salaries and wages, overhead and administrative charges) are billed on the quarterly billing as **Labor Hours** and **Current Billing Period Charges**.

Any time that cannot be directly related to an account, (such as billing and accounting work) will be charged to a special account number. The Accounting Office totals these **administrative charges** for the billing period and distributes them back to all of the accounts based on the number of hours charged to each account during that billing period.

The **Overhead Charges** are based on the number of labor hours charged to the account. The overhead charges consist of rent, travel, supplies, training, and personnel services. If there is no labor charged to the account during the billing period, there will be no overhead charges for that billing period with the exception of the last month of each fiscal year. This is due to the fact that the labor charges end June 30 for the current fiscal year. However, several kinds of overhead charges such as supply orders and travel expenses are paid after the fiscal year ends. The SWRCB Accounting Office keeps track of these charges and distributes them back to all of the accounts based on the number of hours charged to each account for the whole fiscal year that has just ended. Therefore, **the quarterly statements for the last month of the fiscal year could show no labor hours charged for the billing period, but some overhead charges could be charged to the account.**

The hours charged to an account are totaled each month by the employee and reported on a monthly timesheet. The timesheets are submitted to the Accounting Office and entered into the automated accounting system, which computes the Labor and Overhead Charges based on the hours reported.

The monthly expenditure information for the billings are taken from monthly automated accounting reports. A running balance on each of the accounts is kept on fee history sheets in each of the site files. The information is extracted from the accounting report and the fee history sheet to produce the statement, and two copies of the statement are sent to the responsible party. If a balance is owed, a check is to be remitted to the Accounting Office with a copy of the statement within 15 days after receipt of the bill. The Accounting Office sends a report of payments to the Fee Coordinator on a quarterly basis.

Copies of the billings will be sent to the appropriate RWQCBs so they will be updated on the accounts, if the responsible party has any questions. **If the responsible party becomes delinquent in their quarterly payments, oversight work will cease immediately. Work will not begin again unless the payments are brought up-to-date.**

DISPUTE RESOLUTION

If a dispute regarding oversight charges cannot be resolved with the Regional Board (see page 3), Section 13320 of the California Water Code provides an appeal process to Regional Board decisions. Regulations implementing Water Code Section 13320 are found in Title 23 of the California Code of Regulations, Section 2050.

DAILY LOGS

A detailed description (daily log) of the actual work being done at each specific site is kept by each employee in the RWQCB who works on the cleanup oversight at the property. Upon request, these logs are provided to the responsible party by the RWQCB staff. They will not be included in the quarterly billing statement.

REMOVAL FROM THE BILLING SYSTEM

After the cleanup is complete, the account can be removed from the active billing system by the RWQCB submitting the appropriate form to the Fee Coordinator. If a balance is due, the Fee Coordinator will send a final billing for the balance owed. The responsible party should then submit a check to the Accounting Office to close the account. The account is removed from the active billing list and will no longer be billed.

ACKNOWLEDGMENT

No cleanup oversight will be performed unless the responsible party of the property acknowledges in writing that he/she agrees to reimburse the State for appropriate cleanup oversight costs. You may wish to consult an attorney in this matter. As soon as the letter is received, the account will be added to the active SLIC Cost Recovery billing list and oversight work will begin.

REGIONAL BOARD DISPUTE RESOLUTION

Based on the Regional Board's review and comment, the following section has been added as a San Francisco Bay Region (Region 2) attachment to the SLIC Cost Recovery Program's "Guide to the Billing Process" enclosure, "Reimbursement Process for Regulatory Oversight".

The Regional Board staff proposes to provide each responsible party (**upon request**) with daily logs of actual oversight work done and supporting accounting information for the responsible party's site. If, upon the receipt of the billing statement, the responsible party disputes the amount due, the responsible party may follow the dispute resolution procedure described below. If the responsible party follows the procedure, the Regional Board will not initiate, except as noted, enforcement action for failure to reimburse the Board. During this procedure, the responsible party is encouraged to confer with Regional Board staff at any time to discuss the areas in question and attempt to resolve the dispute.

1. The responsible party must notify the Regional Board in writing within 30 calendar days of receipt of the billing statement to indicate that it disputes the billing statement and requests a meeting with the Regional Board Assistant Executive Officer. This notification must indicate the specific areas of dispute and provide all appropriate support documentation. Upon completion of the meeting, the Assistant Executive Officer will provide a recommendation to the Regional Board Executive Officer on the dispute and recommend an amount due, based on documentation provided by both the responsible party and the Board staff at the meeting. The Executive Officer will submit a written decision and resultant amount due to the responsible party and specify the new due date by which the resultant amount due must be paid to avoid enforcement action. This due date will be not less than ten working days from the date of the Executive Officer's written decision.

2. If, upon receipt of the Executive Officer's written decision, the responsible party still disputes the amount due and so notifies the Executive Officer by the new due date, the Executive Officer will schedule an appeal hearing of the decision before the Regional Board at the next appropriate monthly meeting. The Executive Officer may also consider recommending that the Board take enforcement action for the responsible party's failure to pay the resultant amount due by the new due date if the Board finds the responsible party's appeal without basis. Any amount due and not appealed to the Board will be considered a violation of the Board's order.